

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

**REHEARING
DECISION**

WTI/171636

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2016, under Wis. Stat. § 49.85(4), to review a decision by Wisconsin Works ["W2"] in regard to W2, a Hearing was scheduled for February 23, 2016. Petitioner failed to appear for that February 23rd Hearing. Accordingly, a *Decision* dated February 24, 2016 was issued dismissing petitioner's petition as abandoned.

The Division of Hearings and Appeals ["DHA"] received an undated handwritten letter from petitioner via U.S. Mail postmarked March 4, 2016. That letter was a request for a rehearing. By a *Rehearing Request* order dated March 8, 2016 petitioner's request for a rehearing was granted. A rehearing was held via telephone from Madison, Wisconsin on March 29, 2016.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following 2 W2 overpayment Claims in the total amount of \$2,880.00 covering the time period March 31, 2015 to September 30, 2015:

- (I) Claim # [REDACTED]; March 31, 2015 to August 31, 2015; \$2,838.00; and,
- (II) Claim # [REDACTED]; September 1, 2015 to September 30, 2015; \$42.00.

There appeared at that time via telephone following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

BY [REDACTED], Quality Assurance Analyst, Team Leader
Wisconsin Works ["W2"]
Forward Service Corporation
607 Elizabeth Street
Shawano, Wisconsin 54166

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 24 years old) is a resident of Dane County, Wisconsin.
2. The Wisconsin Department of Children and Families ["DCF"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following 2 W2 overpayment Claims in the total amount of \$2,880.00 covering the time period March 31, 2015 to September 30, 2015:
 - (I) Claim # [REDACTED]; March 31, 2015 to August 31, 2015; \$2,838.00; and,
 - (II) Claim # [REDACTED]; September 1, 2015 to September 30, 2015; \$42.00.
3. In regard to the overpayment Claim # [REDACTED], identified in *Finding of Fact* #2, above, petitioner received a written W2 overpayment notice entitled *Wisconsin Works (W-2) Overpayment Notice* dated August 27, 2015; that W2 overpayment notice explained the overpayment and how petitioner could file an appeal (i.e. a fact finding review), including the 45-day time limit for filing an appeal.
4. In regard to the overpayment Claim # [REDACTED], identified in *Finding of Fact* #2, above, petitioner received a written W2 overpayment notice entitled *Wisconsin Works (W-2) Overpayment Notice* dated September 28, 2015; that W2 overpayment notice explained the overpayment and how petitioner could file an appeal (i.e. a fact finding review), including the 45-day time limit for filing an appeal.
5. Petitioner never filed an appeal in response to the August 27, 2015 and September 28, 2015 W2 overpayment notices.

DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2013-14).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2013-14).

The Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] may limit the scope of the hearing to

exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing." Wis. Stat. § 49.85(4) (2013-14).

Petitioner received written W-2 overpayment notices which explained the overpayments and how petitioner could file an appeal -- but never filed an appeal. Thus, petitioner had a prior opportunity to contest the overpayments listed in *Finding of Fact #2*, above. It follows that petitioner may not now contest the merits of the W-2 overpayment. It is noted that, had petitioner appealed by requesting a fact-finding review, she could have also had a Hearing if the result of the fact finding review was not in her favor. See, Wis. Stat. §§ 49.152(1)(b) & (c) (2013-14).

Petitioner testified that she received neither the August 27, 2015 nor September 28, 2015 W2 overpayment notice. This is not credible. On August 20, 2015 petitioner telephoned the W2 agency to inquire about updating her address (although she apparently did not update her address at that time). At least some of her W2 checks were sent to the same address as the August 27, 2015 nor September 28, 2015 W2 overpayment notices -- and those checks were cashed. Finally, during a telephone call between petitioner and the W2 agency on September 2, 2015 the W2 overpayments were discussed.

Petitioner does not claim that the proper procedures for a tax intercept were not followed. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the W2 overpayment Claims identified in *Finding of Fact #2*, above, must be upheld.

CONCLUSIONS OF LAW

Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of \$2,880.00 and that amount may be applied against the W2 overpayment Claims identified in *Finding of Fact #2*, above.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED; DCF may certify the amount of \$2,880.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the W2 overpayment Claims identified in *Finding of Fact #2*, above.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of April, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 6, 2016.

Wisconsin Works (W-2)
Public Assistance Collection Unit